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(32)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.113 OF 2005

APPELLANT (In Jail) — Mahaveer, aged about 40 years, Banda Sarthi, resident of village Jakela, P.S Pussaur, Distt. Raigarh (Chhattisgarh)

Vs

RESPONDENT — State of Chhattisgarh, through: the District Magistrate, Raigarh (M.P.)

Present:
Mr. Roshan Dubey, Advocate for the appellant.
Mr. Arun Sao, Government Advocate for the respondent-State.

ORAL JUDGMENT

(27th September, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 13th January, 2005 passed by the learned 4th Additional Sessions Judge, (FTC), Raigarh in S.T. No.62/04 whereby learned Additional Sessions Judge has convicted the appellant under Section 307 of the IPC and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.200/-, in default of payment of fine additional R.I. for 15 days.

Case of the prosecution, in brief, is that on 29.7.2002 at about 5.00 p.m. Kishore Naik returned his home at Village Jakela by marshal jeep. There was some oral altercation between Kishore and the wife

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of appellant in relation to victim not taking the girl namely Pinky, as requested by the wife of the appellant. At that time the appellant Mahaveer came there with a cricket bat and assaulted Kishore on his face as a result of which he fell on the ground, even then, Mahaveer continued assaults and after assaulting fled from there. Kishore became unconscious and blood started oozing from his mouth. He was taken to the District Hospital, Raigarh where he was admitted for treatment. On the basis of report of Smt. Chhaya, wife of the victim, offence was registered vide Ex.P-13 and on the basis of this report formal crime was registered vide document of Ex.P-9 in the Police Station Pussour. M.L.C. report of the victim was obtained from the District Hospital, Raigarh vide Ex.P-11A and looking to the precarious condition of the victim, his dying declaration was recorded by Shri K.S. Mandavi (PW-7), Executive Magistrate.

After completing investigating the charge sheet was filed in the court of Judicial Magistrate 1st Class, Raigarh and the same was received on transfer for trial by the learned Additional Sessions Judge. During trial, the prosecution examined 14 witnesses in all and thereafter, the statement of accused was recorded in which he denied the circumstances appearing against him and pleaded innocence. Learned trial court after hearing learned counsel for the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respective parties, convicted and sentenced the appellant, as mentioned in Para 1 of this judgment.

Learned counsel for the appellant submits that the victim was addict to alcohol, on the date of incident also he returned from the duty in drunken condition, he was sitting on the platform (चबूतरा) and he sustained injuries over his jaw & face due to fall from the platform (चबूतरा).

On the other hand, learned counsel for the State has supported the impugned judgment and submitted that conviction of the appellant is based on the statement of victim as also eyewitness Smt. Chhaya (PW-2) & Natthuram (PW-5), who have corroborated the statement of the victim. He further submits that the victim was examined by the Dr. Anil Kushwaha (PW-14), who has proved injuries sustained by the victim and from the statement of Dr. P.D. Tandon (PW-8), Radiologist, fracture injury of jaw of the victim is also proved. The doctors have categorically stated that cumulative effect of the injuries sustained by the victim was sufficient to cause death in the ordinary course of nature.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.

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..... विरूद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Conviction of the appellant is based on the statement of victim Kishore (PW-1), who has stated that on the date of incident in the evening he returned home from the duty, there was some oral altercation with his Bhabi namely Jagmati as she was objecting as to why he did not take Pinky and another girl at that juncture. The appellant, who was sitting behind, assaulted him with a cricket bat on his mouth as a result of which his one tooth was broken and jaw was fractured. Thereafter, the appellant assaulted him over his head and fled from there. He became unconscious, he was taken to the District Hospital, Raigarh where he remained admitted for 15 days and received treatment and after getting treatment there, he also received treatment at Raipur for a period of two months. In the cross-examination he has admitted that the appellant is the husband of his wife's sister. In his lengthy cross-examination, the defence has not been able to extract any significant contradiction and omission and he has stuck to his diary statement as also FIR lodged by the eyewitness Smt. Chhaya, his own wife. His statement is duly corroborated by Smt. Chhaya (PW-2),who has seen the incident and stated that her husband returned home at about 4.00 p.m., there was some altercation between the victim and the girls whom he had taken in his jeep and at that juncture the accused assaulted him by a cricket

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bat over his head and fled from there. Similar is the evidence of PW-5 Natthuram, who has stated that Kishore & Jagmati were quarrelling and abusing each other, Kishore was sitting under the Peepal tree on the platform (चबूतरा), whereas he was sitting on his door. At that point of time Mahavir assaulted Kishore with cricket bat, however, he could not see as to on what part of the body he assaulted Kishore and how many times he assaulted Kishore. However, Kishore was drenched in blood and Mahavir fled to his house. In Para-3 of cross-examination, this witness has expressed his ignorance that Kishore fell from the platform (चबूतरा) as he was in drunken condition and therefore, he sustained injuries over his face.

Dr. Anil Kushwaha (PW-14) has proved the MLC report of Ex.P-11A and stated that Kishore sustained six lacerated wounds over upper & lower lip, chin, head, right side of forehead and above the eyebrow. There was danger to his life as a result of cumulative effect of the above injuries. He referred him for radiological examination. Dr. P. D. Tandon (PW-8) Radiologist, has proved the X-ray report of Ex. P-7 and stated that there was fracture in the right side of jaw.

Thus, from the evidence of the above witnesses as well doctors it is established that numerous injuries were caused by the appellant

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

over the vital part of victim Kishore as a result of which his jaw was fractured. The injuries were caused by the cricket bat on the head, face & mouth and the doctors have opined that same were sufficient to cause death of victim Kishore in the ordinary course of nature. Version of Kishore is duly corroborated by the statement of witnesses Chhaya (PW-2) & Natthuram (PW-5).

So far as the defence of appellant that he sustained injuries as a result of fall from the platform (चबूतरा) is concerned, looking to the numerous injuries present over the jaw, upper & lower lips, above the eyebrow and on the head of victim, the defence taken by the appellant does not appear to be probable and therefore, in the considered opinion of this Court the prosecution has been able to prove that the injuries were in fact caused by the appellant, which was sufficient to cause death of victim in the ordinary course of nature.

In view of the above, the conviction of the appellant under Section 307 of the IPC cannot be faulted, as the same is based on the eyewitness account given by the victim and other eyewitnesses. However, considering the fact that the incident occurred in the spur of moment without any premeditation on account of some altercation between wife of the appellant and the victim and therefore, this

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Roshan/-	Court is of the considered opinion that ends of justice will be served if the sentence imposed on the appellant is modified. In the result, the appeal is partly allowed. Conviction of the appellant under Section 307 of IPC is maintained, however, the jail sentence imposed upon him is hereby modified and he is directed to undergo R.I. for 5 years in place of R.I. for 7 years. **Sd/-** **Dhirendra Mishra** **Judge**	

[पीछे देखें]